DONALD J. THOMAS

IBLA 76-11 Decided October 15, 1975

Appeal from the decision of the Alaska State Office, Bureau of Land Management, holding that the notice of location of Headquarters Site AA-8774 is unacceptable for recordation.

Reversed.

1. Alaska: Generally -- Alaska: Possessory Rights -- Alaska: Headquarters Sites -- Withdrawals and Reservations: Generally

   Where the claimant of a headquarters site filed his notice of location, occupied the land, and began making improvements thereon prior to the segregation of the land by a withdrawal made subject to valid existing rights, it is error for the Bureau of Land Management to refuse to record the claimant's notice of location, or to cancel the claim without notice and an opportunity for hearing.

APPEARANCES: Donald J. Thomas, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

By its decision of May 13, 1975, the Alaska State Office of the Bureau of Land Management held that the notice of location of a headquarters site, AA 8774, was unacceptable for recordation. The decision recited that the land at issue was withdrawn and segregated from the operation of the public land laws effective March 28, 1974, by Public Land Order 5418. It noted that the location notice was filed prior to the withdrawal, on January 14, 1974, but stated that field examinations conducted on September 17, 1974, and January 29, 1975, revealed that the claimant, Donald J. Thomas, had not possessed or occupied the land since the filing of the location notice. The decision held that the mere filing of a location notice, without more, does not establish any rights in

the land and that the intention to use the land in the future is not sufficient to segregate the land from further appropriation [or withdrawal].

In his appeal, Thomas states that he did in fact enter and occupy the land on January 14, 1974, the same day he filed his location notice, and that he set up a 10' x 12' tent with all the related equipment necessary to maintain residence. While living on the site, he says, he felled trees and barked them in preparation to begin construction of a cabin. He alleges that all of this was done prior to March 28, 1974.

The Bureau conducted field examinations of the claim on September 17, 1974, and on January 29, 1975. The first report of examination noted and photographed the tent erected on the site, a small clearing, an unstated number of felled logs lying in place, and two which had been peeled. The corners of the claim were marked.

Appellant states that he had gone to town for supplies, but that he was informed by a neighbor of the examiner's visit, inspection and photography. This neighbor reportedly informed appellant that hi had made statements to the examiner confirming that Thomas was residing on the claim and making improvements. The examiner's alleged encounter with the neighbor is not mentioned in the report. Nevertheless, the field report appears to confirm the allegations of the appellant regarding his occupation and improvement of the claim.

The examination of January 1975 indicated that little or nothing had been done in the interim since the examination of the previous September. However, in the context of the issue presented by this case, we do not attach much significance to that finding.

A notice of location, regular on its face, filed for land which is open to such location at the time of filing, is acceptable for recordation. Allen D. Hodge, 22 IBLA 150 (1975); Eldon R. Reese, 21 IBLA 251, 252 (1975); James Milton Cann, 16 IBLA 374, 377 (1974); 43 CFR 2563.1; 43 CFR 2563.2-1(d). As the land was open to location when the notice, regular on its face, was filed, it should have been recorded. In fact, the master title plat for the township, current as of March 21, 1974, properly shows the headquarters site in question. This was a week prior to PLO 5418.

The State Office, while purporting to refuse to record the claim, in reality cancelled it on the ground that appellant had no valid existing right on the date of the withdrawal.

Since appellant's noncompliance with the headquarters site law has not been established by admitted or undisputed facts, it

is error to cancel his claim without a hearing. We need not decide the truth of his contentions, but only whether they constitute a sufficient demonstration of actual possession, occupation and overt physical improvement of the land for the purposes of the Act prior to the withdrawal to entitle the claimant to assert a right to have his claim recorded by the Bureau of Land Management. See Ray W. Ferguson, 22 IBLA 160 (1975); Allen D. Hodge, supra; Donald Richard Glittenberg, 15 IBLA 165 (1974).

It is well-established that the mere marking of boundary lines and posting of corners of the tract does not constitute occupation or possession. Donald Richard Glittenberg, supra at 168, and cases cited therein. But where, as here, actual possession, occupation and the initial effort toward physical improvement prior to withdrawal has been alleged, it is error to refuse to record the claim.

This decision does not constitute a finding by this Board that the facts are as stated by the appellant, or that the claim is, or can be, in compliance with the law. We merely hold that the refusal of the Alaska State Office to accept the appellant's notice of location for recordation is not justified by the record.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

Edward W. Stuebing
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Frederick Fishman
Administrative Judge